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No. 82-1364

IN THE

Supreme Court of the United States

October Term, 1982

AQUATIC TECHNICAL SERVICES INC.,
Petitioner,

against

COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT, SAMUEL ROZZI, Commissioner of of Police, and FRANCIS T. PURCELL, County Executive,
Respondents.

Brief for Respondents in Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of New York and Appendix

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982.

AQUATIC TECHNICAL SERVICES Inc.

Petitioner,

against

COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT, SAMUEL ROZZI, Commissioner of Police and FRANCIS T. PURCELL, County Executive,

Respondents.

Brief for Respondents in Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

Opinions in the Courts Below.

The judgment of the Supreme Court of the State of New York, County of Nassau, Trial Term, dated September 15, 1981, dismissing the action with costs and disbursements, is set out in petitioner's appendix at pages A-3 through A-5.* The memorandum decision of that same court, dismissing the complaint, dated August 10, 1981, which is also unreported, is set out in petitioner's appendix at pages A-6 to A-24.

*(A.)—Refers to page numbers in the appendix of petitioner contained in the Petition for Writ of Certiorari to the Supreme Court of the United States, unless otherwise indicated.

The order of the Appellate Division, Second Judicial Department, dated August 2, 1982, unanimously affirming the judgment of the Supreme Court of the State of New York, County of Nassau, with costs, is reported at 89 A. D. 2d 841 (2d Dept. 1982) and is also set out in the petitioner's appendix at pages A-25 to A-26.

The order of the Court of Appeals of the State of New York, dismissing the appeal as of right by the court *sua sponte* upon the ground that no substantial constitutional question is directly involved, is reported at 58 N. Y. 2d 689 (1982) and is set out at pages A-27 through A-28 in the petition and with notice of entry thereof at pages RA-1 through RA-2* of respondent's appendix. To date, no motion for leave to appeal to the Court of Appeals of the State of New York has been made.

Jurisdictional Statement.

This Court is without jurisdiction to hear the instant matter since there has been no final judgment in the New York State Court of Appeals, although jurisdiction is alleged pursuant to 28 U. S. C. 1257(3).

Questions Presented for the Court to Review.

Whether this Honorable Court has jurisdiction to entertain the instant matter.

Whether petitioner has cause to complain since respondents, in the valid exercise of their police powers, have a right to regulate the abutting navigable and tidal waters of Nassau County.

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*(RA)—Refers to page numbers in respondents' appendix herein, unless otherwise indicated.

Whether the towing operations infringed upon petitioner's constitutionally protected liberty and property rights.

Constitutional Provision Involved.

The due process clause of the 14th Amendment to the United States Constitution is the constitutional provision involved in the within case and is set forth in pertinent part at page "2" of the petition.

Statement of the Case.

The within action was commenced in the Supreme Court of the State of New York, County of Nassau, by service of a summons and complaint on or about July 14, 1978. Issue was joined by service of a verified answer on or about August 7, 1978.

This is an action for a permanent injunction and for monetary damages based upon alleged violations by the respondents of petitioner's constitutional rights under the 14th Amendment of the United States Constitution and Article 1, Section 6, and Article 8, Section 1, of the New York State Constitution and alleged violations by respondents of Section 51 of the General Municipal Law and Section 340 of the General Business Law of the State of New York, arising by reason of the respondents' towing of disabled vessels.

An order to show cause for a preliminary injunction, dated July 19, 1978, was served by the petitioner. An affidavit of Martin Jellema, dated August 4, 1978, was thereafter submitted by the respondents in opposition. An order denying petitioner's request for a preliminary injunction, dated August 14, 1978, was rendered by the

Honorable Justice Sullivan of the Supreme Court of the State of New York, County of Nassau.

The non-jury trial in this matter was held before the Honorable Howard E. Levitt, Justice of the Supreme Court of the State of New York, County of Nassau, on April 22nd, 23rd and 27th, 1981. The Justice reserved decision. Thereafter, on August 10, 1981, Justice Levitt issued a memorandum decision dismissing the complaint in its entirety. Judgment was thereafter rendered respondents against the petitioner with costs and disbursements in the action. Said judgment was dated September 15, 1981.

An appeal to the Appellate Division of the Supreme Court of the State of New York was taken by the petitioner by notice of appeal dated October 9, 1981. The appeal was perfected and the Appellate Division issued an order on August 2, 1982, ordering that the judgment appealed from was unanimously affirmed with costs.

The petitioner commenced the within action seeking to enjoin the Nassau County Police Department Marine Bureau from performing the duties of said Bureau, claiming that the Marine Bureau was causing great expense to the taxpayers of Nassau County. Petitioner further claimed that the Marine Bureau, in providing towing to disabled vessels, was violating the Constitution of the State of New York and the United States Constitution, allegedly to the detriment of the police function of law enforcement and also allegedly depriving petitioner of his rights under the Constitution of the United States.

The Marine Bureau is an integral part of the Nassau County Police Department. The Marine Bureau is charged

with the operation of boats on the navigable waters under the jurisdiction of the County of Nassau for the protection of persons and property adjacent to said waterways and the enforcement of all laws, regulations and ordinances.

It has a fleet of seven different types of motorboats with inboard motors ranging in length from 31 feet to 45 feet. It has four whalers, each of which is 17 feet in length and having outboard motors, and three fishing boats, each of which is 20 feet in length without outboard motors. Each boat is fully equipped with first aid material, fire fighting material, body baskets for the removal of deceased persons, and all other equipment which may be needed for the giving of first aid and assistance to the occupants of distressed or disabled vessels, and for the preservation of life and property.

The Marine Bureau consists of an inspector, a captain, two lieutenants, five sergeants and 64 police officers, all of whom are highly trained to perform all of the duties and to meet and cope with all emergencies incumbent upon them as operators and crew members of the Marine Bureau fleet. The operations of the Marine Bureau are primarily confined to the inland waterways in Nassau County running from the New York City line to the Suffolk County line, both on the north shore and on the south shore. The members of the Marine Bureau are mandated, as part of their police duties, to come to the aid of any vessels in distress and/or the person or persons aboard such vessel. In the event a member of the Marine Bureau has reason to believe that the distressed vessel is at the mercy of the elements, such distressed vessel will be towed to the nearest point of safety where its occupants can be safely put ashore. From such nearest point of safety, the occupants of the distressed vessel can then contact a private

towing company to render such services as may be necessary.

A notice of appeal, purportedly as of right, was thereafter filed to the Court of Appeals of the State of New York. Said appeal was dismissed by the Court of Appeals *sua sponte* upon the ground that no substantial constitutional question is directly involved. The petitioner did not make a motion for leave to appeal to the Court of Appeals of the State of New York within the time limitations set forth in the New York State Civil Practice Law and Rules §5602. Thereafter, petitioner served respondents with the petition for writ of certiorari to this Court.

ARGUMENT.

This Honorable Court has no jurisdiction to entertain the instant matter.

Petitioner has invoked this Court's jurisdiction pursuant to 28 U. S. C. §1257(3). It is the contention of the respondents that the petition should be dismissed for lack of jurisdiction.

On September 15, 1981, a final judgment was entered in the Supreme Court, Nassau County, dismissing the within action (A. 3-5). Petitioner then appealed from said judgment to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department. That court ordered that the judgment appealed from of the Supreme Court, Nassau County, dated September 15, 1981, be unanimously affirmed with costs for reasons stated in the opinion of Mr. Justice Levitt at Trial Term. The order of the Appellate Division of the State of New York, Second Judicial Department, was entered on

August 2, 1982 (A. 25, 26), and served with notice of entry on August 9, 1982, by respondents.

Under the New York Civil Practice Law and Rules, an appellant desiring to appeal to the Court of Appeals of the State of New York may appeal as of right pursuant to CPLR 5601 or by permission for leave to appeal pursuant to CPLR 5602, depending upon the nature and results of the prior court orders. In the case at bar, petitioner filed a notice of appeal as of right to the New York State Court of Appeals purportedly pursuant to CPLR 5601(b)(1). The New York State Court of Appeals, on November 16, 1982, dismissed that appeal as of right *sua sponte* upon the ground that there is no substantial constitutional question directly involved (A. 27, 28). The order of the New York State Court of Appeals, dated November 16, 1982, with notice of entry, was served upon petitioner's appellate counsel and attorney of record on November 19, 1982. A copy of said order, together with affidavit of service is annexed to the instant brief for respondents and marked Exhibit "RA 1." Petitioner failed to move for leave to appeal to the New York State Court of Appeals at any stage of the instant proceedings prior to petitioner's petition for certiorari in this Court.

The law is clear that, for petitioner to invoke the jurisdiction of this Court, the petitioner is required to pursue the correct avenue for review in the New York State court. In the case at bar, petitioner was required to move for leave to appeal to the New York State Court of Appeals under CPLR 5602. Petitioner had notice, pursuant to the order of the New York State Court of Appeals, dated November 16, 1982, that his appeal as of right was dismissed upon the ground that there was no substantial constitutional question involved. Petitioner, pursuant to

CPLR 5514 and CPLR 5602, could have timely moved for permission for leave to appeal to the New York State Court of Appeals, which time has expired. Clearly, the order of the New York State Court of Appeals, dated November 16, 1982, did not in and of itself affirm or deny the validity of a lower court judgment. *Minneapolis S.P. & S.S.M.R. Co. v. Rock,* 279 U. S. 410, 73 L. Ed. 766, 49 S. Ct. 363 (1929); *Cheasapeake & O.R. Co. v. Mihas,* 280 U. S. 102, 74 L. Ed. 207, 50 S. Ct. 42 (1929).

Simply put, petitioner's failure to seek discretionary review by a motion for leave to appeal to the New York State Court of Appeals, even though the state court has refused to hear the appeal as of right, results in the legal conclusion that the judgment herein sought to be reviewed was not that of the highest court of the State of New York in which a decision could be had. Thus, it is respectfully submitted that this Court has no jurisdiction of this case. *Gotthilf v. Sills,* 375 U. S. 79, 11 L. Ed. 2d 159, 84 S. Ct. 187 (1963); *McMaster v. Gould,* 276 U. S. 284, 72 L. Ed. 574, 48 S. Ct. 299 (1928); *Matthews v. Huwe,* 269 U. S. 262, 70 L. Ed. 266, 46 S. Ct. 108 (1925); 32A Am. Jur. 2d, Federal Practice and Procedure, Section 615, page 134, revised 1982.

Moreover, this court has consistently adhered to the self-imposed principle that it will not review a state court's judgment based upon an adequate and independent non-federal ground even though a federal question may be involved and perhaps wrongly decided. *Murdock v. Memphis,* 20 Wall. 590, 636, 22 L. Ed. 429 (1875); *Berea College v. Kentucky,* 211 U. S. 45, 53 L. Ed. 81, 29 S. Ct. 33 (1908); *Fox Film Corp. v. Muller,* 296 U. S. 207, 80 L. Ed. 158, 56 S. Ct. 183 (1935). While it is clear that this Court must decide for itself whether the non-federal

grounds adequately support the state judgment, a review of the memorandum decision of Mr. Justice Levitt of the Supreme Court, Nassau County, dated August 10, 1981 (A. 6-24), clearly and unambiguously details adequate support for the state judgment upon adequate and independent non-federal grounds so as to warrant a dismissal of the instant petition.

Furthermore, it is essential to the jurisdiction of this Court, under 28 U. S. C. §1257(3), that a substantial federal question must be properly raised in the state court proceedings. The proffered federal question by the petitioner herein is absolutely devoid of merit so as to be frivolous. It is respondents' contention that the alleged federal question is insubstantial and is a further ground for denial of the petition for writ of certiorari. *Zucht v. King,* 260 U. S. 174, 67 L. Ed. 194, 43 S. Ct. 24 (1922); *Palmer Oil Corp. v. Amerada Corp.*, 343 U. S. 390, 96 L. Ed. 1022, 72 S. Ct. 842 (1952).

In sum, it is the position of respondents that, for all the reasons stated hereinabove, the petition for certiorari should be dismissed on jurisdictional grounds.

Petitioner has no cause to complain since respondents, in the valid exercise of their police powers, have a right to regulate the abutting navigable and tidal waters of Nassau County.

Nassau County was established by an act of the State Legislature in 1898 (L. 1898, Ch. 588). The areas of Hempstead and North Hempstead were originally known only as North Hempstead, and were erected by the Kieft Patent of 1644, the Nichols Patent of 1666 and the Dongan Patent of 1685. The south shore boundaries

established by the patents extend to the high waterline of the Atlantic Ocean. The north shore boundaries extend to the waterline of Long Island Sound, except as to the areas known as Manhasset Bay and Cold Spring Harbor. See the cases of *Grace v. Town of North Hempstead,* 166 App. Div. 844 (2d Dept. 1915), aff'd 220 N. Y. 628 (1917), and *Tiffany v. Town of Oyster Bay,* 209 N. Y. 1 (1913), wherein the court held that local jurisdiction over the bay and harbor is derived through the original patents which grant to the local body ownership in the beds of these waters. Regarding title to water beds (see *Rogers v. Jones,* 1 Wend. 237).

See, also, State Law §7-a for jurisdiction and ownership of offshore waters and lands thereunder. Respondents submit that, in addition to navigable and tidal water areas, the County of Nassau has jurisdiction with respect to certain offshore waters when it is performing police power functions.

In 1691, the Legislature of the Province of New York confirmed the colonial patents. Article 1, Section 14, of the New York State Constitution and the predecessor constitutional enactments reaffirmed the viability of the colonial patents. The Legislature of the State of New York, pursuant to the constitutional mandate giving due deference to the colonial patents, has conferred upon the County of Nassau the right to regulate their abutting navigable and tidal waters.

In 1925, the New York State Legislature enacted the Nassau County Police Act, Chapter 451, Laws of 1925, amended by Chapter 3, Laws of 1926, and further amended by Chapter 513, Laws of 1928. The Nassau County Police Act, as it was popularly known, was repealed by virtue of Chapter 272 of the Laws of 1939, the

Nassau County Administrative Code. See Section 26-14.0, Section 2.

Chapter 451, Laws of 1925, §14, entitled "Detail to duty" authorized the Nassau County Police to patrol such parts of the county, "to such rivers, creeks and harbors therein * * *" Section 20 thereof, entitled "Duties of police department and police force" of the Nassau County Police Act, *inter alia,* authorized the police to protect the rights of persons and of property, to guard the public health, to remove nuisances, to assist, advise and protect immigrants, strangers and travellers. Section 21 thereof, entitled "Entry where felony is suspected, of such act authorized the boarding of any ship, boat or vessels within the police district where a felony is suspected."

With the repeal of the Nassau County Police Act, by the enactment of the Nassau County Administrative Code, Chapter 272, Laws of 1939, effective April 12, 1939, coupled with the prior legislative enactment of the County Government Law of Nassau County, Chapter 879, Laws of 1936, effective January 1, 1938, establishing a department of police, Article VIII thereof, the Nassau County Police Department was and is vested with parallel and more extensive authority than under the Nassau County Police Act.

Section 22-10.0 of the Nassau County Administrative Code authorizes the Nassau County Board of Supervisors to amend or supplement any provision of the Nassau County Administrative Code. Under Section 8-15.0 of the Nassau County Administrative Code, amended by Local Law No. 2-1951, enacted by the Nassau County Board of Supervisors, the said Board included in the tax to be levied upon the real estate in the County, the annual expense of

the maintenance, operation and personal services of the different bureaus, divisions or offices which serve the County, among which is included the Marine Bureau of the Nassau County Police Department.

Section 22-3.0 of the Nassau County Administrative Code authorizes the head of an agency to make rules or regulations for the conduct of his office or department. In Section 22-1.0 of the Nassau County Administrative Code, subdivision "9," the term "Agency" is defined as any department, bureau or office of the County of Nassau. All courts shall take judicial notice of all laws contained in the said Administrative Code and of all rules and regulations adopted pursuant to the Administrative Code, as provided in Section 22-11.0 of the Administrative Code.

Pursuant to Section 8-12.0 of said Code, the Commissioner of Police may detail members of the police force to such parts of the County as he may deem advisable. Section 8-15.0 authorizes the Board of Supervisors to annually raise money for the bureaus and the divisions of the Police department, including the Marine Division.

Section 8-22.5 of the Nassau County Administrative Code sets forth the duties of the Police Department which include, *inter alia*, protecting the rights of persons and property, removing nuisances existing in public places, regulating the movement of vehicular traffic in places, and guarding the public health. Pursuant to Section 8-13.0, the Commissioner of Police has the power to discipline a member of the police force for neglect of duty.

Pursuant to Section 8-3.0 of the Nassau County Administrative Code, the Commissioner of Police may promulgate rules and regulations for the purposes of carrying

out the functions of the Police Department. It is well established that a State, in the exercise of its police power, may establish rules applicable on land and water within its territorial limits even though these rules may incidentally affect maritime affairs. *Askew v. American Waterways Operators,* 411 U. S. 325, 93 S. Ct. 1590, 36 L. Ed. 2d 280 (1973), reh. den. 412 U. S. 933, 93 S. Ct. 2746, 37 L. Ed. 2d 162 (1973).

With the foregoing legislative history, this Court is asked to take judicial notice of Rule 4(c) of the Rules and Regulations of the Nassau County Police Department, adopted by the Police Commissioner, which reads as follows:

> "The Marine Bureau is charged with the operation of boats on the navigable waters under the jurisdiction of the County of Nassau, and is further charged with the protection of persons and property on and adjacent to said Waterways, including islands therein, and the enforcement of all laws, regulations, and ordinances."

We, therefore, have a delegation of police powers by the State to the County of Nassau. Such police power is being properly exercised. The police power exercised for the common good was duly recognized in *People v. King,* 110 N. Y. 418 (1888). A similar ruling was made in *People v. Nahman,* 298 N. Y. 95 (1948).

Police power is one of the broadest powers and its exercise is limited only by the requirement that there be a reasonable relationship to the public health or welfare and that it not be exercised arbitrarily. The facts in the within matter will clearly indicate that the powers exercised by the

Marine Bureau have a reasonable relationship to the preservation of life and property, which is strongly related to the public health or welfare, and such police power exercised by the Marine Bureau is not exercised arbitrarily.

Respondents respectfully submit that the cases cited in the petition have no bearing on the case at bar. The Marine Bureau is exercising a proper police function in protecting the lives and property of the residents and visitors of Nassau County. Petitioner is not complaining of a legislative regulation of its *own* activities by the Police Department but, rather, petitioner complains about what the respondents are doing themselves.

Petitioner goes further in his petition to state that government may not engage in private enterprise. Two cases are cited for this proposition. *Ohio v. Helvering,* 292 U. S. 360, 78 L. Ed. 1307, 54 S. Ct. 725 (1933), a case dealing with taxation of liquor distribution, and *Goldblatt v. Town of Hempstead,* 369 U. S. 590, 8 L. Ed. 2d 130, 82 S. Ct. 987 (1962).

The issue in *Ohio v. Helvering* was whether the state government could be required to pay taxes on the money it had made in the business of distribution of liquor. (It is interesting to note that there are states where the government is engaged in the retail business of selling liquor *to the exclusion of all others.*)

In the case at bar, the Marine Bureau of the Nassau County Police Department does not charge a fee when it provides towing to disabled vessels. This service is provided as part of the duties of the Marine Bureau police.

Petitioner also implies that the members of the Marine Bureau police are wrongfully accepting gratuities and/or

money from the people they assist. Petitioner also asserts that the Marine Police were harassing him by questioning his license in front of others. The police have the obligation and duty to do so and even assuming *arguendo* that their questioning could be considered harassment, it is respectfully submitted that the proper procedure for the petitioner to employ is to bring the action to the attention of the Commissioner of Police for disciplinary measures (Nassau County Administrative Code §8-13.0).

In regard to petitioner's allegation that the Marine Bureau police were providing towing to disabled vessels outside the County of Nassau, this Honorable Court is respectfully referred to the fact that Captain Martin Jellema of the Marine Police Bureau states under oath that he cannot conceive of the Bureau towing disabled vessels outside of the County. However, Captain Jellema did state that if a United States Coast Guard boat were to need assistance in towing disabled vessels, the Marine Bureau would assist at their request.

A review of the towing and salvage provisions of the United States Coast Guard Regulations shows that the Coast Guard may render assistance to vessels in distress including towage. In regard to the role of a private operator, the United States Coast Guard may turn the tow over to a private operator if the assisted vessel agrees, which is the same procedure employed by the Marine Bureau.

Furthermore, in most instances cited by the petitioner as being violative of law, the United States Coast Guard and/or Coast Guard Auxiliary was involved and worked hand in hand with the Marine Bureau. In one instance, the Coast Guard asked if the Marine police were going in the direction of a particular boat. The Marine police were not

going in that direction, so the Coast Guard said that they would handle the situation. This is another example of the Marine police working hand in hand with the Coast Guard.

Also interesting to note is the reference to the Coast Guard Auxiliary taking a boat to the Jones Beach fishing pier and the Marine police taking it from there. It is obvious, even to the novice, that the Coast Guard and the Marine Bureau work hand in hand.

A witness for the petitioner even stated that, in 90 percent of the responses to disabled vessels, the Coast Guard will do the towing or whatever is necessary to make sure the vessel is safe.

Respondents respectfully submit that the record will bear out the fact that the United States Coast Guard has the primary role in most instances, and the Marine Bureau police have the secondary role in assisting the United States Coast Guard.

In reviewing the provisions of federal law relative to the United States Coast Guard, as set forth in 14 U.S.C. §826, it is clear that the County must render assistance to the United States Coast Guard or be in violation of the federal law. 14 U.S.C. §826 provides that the United States Coast Guard may utilize, for any purpose incident to carrying out its functions and duties, any motor boat placed at its disposition for such purpose by any state or political subdivision thereof. Further, 14 U.S.C. §1 sets forth the duties of the United States Coast Guard which include enforcing regulations for the promotion of safety of life and property on the high seas and on waters, and to develop,

establish, maintain and operate, with due regard to requirements of national defense, aid to maritime navigation and rescue facilities for the promotion of safety on the high seas and waters. 14 U.S.C. §822 deals with the purpose of the Coast Guard Auxiliary which, *inter alia,* is to promote safety and to effect rescue on high seas and navigable waters. Section 81 of 14 U.S.C. gives the United States Coast Guard authority to aid navigation. Section 88 of 14 U.S.C. involves saving life and property and provides that the United States Coast Guard may tow into port sunken or floating dangers to navigation.

A review of the federal and state law, as set forth herein, clearly shows that the Marine Bureau of the Nassau County Police Department is acting in accordance with good and acceptable law and, in fact, would be in violation of the laws should it stop providing aid to distressed vessels.

The function of the Police Department is multi-faceted. Query: Does petitioner suggest that, on the highway for example, the police may only ticket a drunk driver and not pull the injured body of the drunk driver's victim to the side of the road? Of course not.

The petitioner submits that the Marine Police Bureau should be permitted to assist vessels only when they are in emergency situations (emergency as defined by petitioner). Petitioner would have the Marine police patrol the waters, responding to vessels in distress. If the vessel were in an "emergency" situation, the Marine police would then be permitted to assist. If not, under petitioner's submission, the Marine police would have the responsibility of calling in a commercial tower and then either waiting to make sure he responded or going back to check on the vessel.

This would be an overbearing burden on the police officers, first in determining an "emergency" situation and second in making sure a commercial tower had responded to the scene. This is totally impractical and could result in further litigation.

Perhaps the best analysis of the constitutionality of the Marine Bureau in towing disabled vessels can be found in the memorandum decision of the Honorable Justice Howard E. Levitt, of the Supreme Court of the State of New York, County of Nassau, set forth in petitioner's appendix at page A-23.

> "Never trust her at anytime, when the calm sea shows her false alluring smile."—Titus Lucretius Carus, 99-55 B.C. [DeRerum Natura (On the Nature of Things) Bk. I, 1.1 (Invocation)]

The towing operations do not infringe upon the petitioner's constitutionally protected liberty and property interests.

Respondents respectfully submit that any towing performed by the Marine Bureau is in accordance with the law and, in any event, does not constitute an infringement upon petitioner's constitutionally protected liberty and property interests.

The petitioner herein claims that, by the Marine Bureau's towing of vessels in distress, it is infringing upon the petitioner's constitutional rights. This argument is devoid of logic. As stated above, the Marine Bureau police tow to the nearest safe harbor. From there, the parties can contact a commercial tower of their choice or, as is often the case, call their own docking facilities who, in certain cases, provide towing services as part of their dockage fee.

The police have never arrogated to themselves the right to exclude the petitioner from his trade. Petitioner has towed boats from Short Beach, and there has been no testimony indicating the police actually ordered the petitioner not to tow. To the extent that any choices are made, private owners made them, and they were free to avail themselves of proper government services such as the assistance to a safe harbor. If the petitioner was only able to obtain the towing job back to the home port and the boat owner, in fact, requested someone else's assistance, this, too, is not the fault of the Marine Bureau. In this regard, petitioner should look to himself as to why he has been unable to obtain the business, or seek new ways to obtain business.

The petitioner should know that it has the right to supply commercial services similar to or identical with government services in general (subject to any formal government orders creating monopolies which may be perfectly legal, such as exclusive franchises, etc.), but that does not mean or imply that the government must then stop providing these services.

Petitioner apparently believes that police "protection" only involves the prevention of theft. Respondents suggest that the word "protection" can easily encompass the process of safeguarding the lives and property of citizens.

Unlike a car towing operator of disabled automobiles where the disabled automobile is pulled to the side of the road, away from moving traffic, and where said disabled automobile is no longer in any danger, the situation involving a disabled vessel which requires towing service, cannot be pulled to the side of any road nor can it be placed in *any* position of safety on the water. The only

manner of treating such disabled vessel, as was explained in the affidavit of Captain Martin Jellema, which disabled vessel is at the mercy of the elements, is to tow to the nearest point of safety. Petitioner, or anyone else, can then be engaged by the owner and/or operator of the disabled vessel, after said vessel has reached a point of safety, to take said disabled vessel from that point of safety to such place as may be determined for the purpose of performing whatever services are necessary in order to repair the said disabled vessel.

The functions performed by the Nassau County Marine Bureau police are for a public purpose, and although the occupants and/or owners of the disabled vessels may benefit from being towed to the nearest point of safety, this does not change such functions from being a public purpose which is to protect citizens and visitors to the County of Nassau. This clearly is not in violation of Article 8, §1 of the New York State Constitution, which prohibits *gifts* or *loan of property* to private persons.

The New York State Constitution only prohibits as a gift the giving of money, credit or property and not *services*, as suggested by petitioner. All of the examples cited by the petitioner represent gifts of money, credit or property only. Contrary to petitioner's contentions, it is a common law police power of municipalities to provide services designed to protect and safeguard life and property. Although a specific statutory authorization is not needed, one exists anyway and can be found in the provisions of the federal and state law as well as the Nassau County Administrative Code, as stated *supra*.

The conduct of respondents in removing or towing disabled or stranded boats from their navigable and tidal waters is not only sanctioned by state law, it is mandated

by federal law. Thus, petitioner's argument is totally specious and unfounded. The Navigation Law, §2(4), the County Government Law of Nassau County, Article 8, the Nassau County Administrative Code, Chapter VIII, the former Nassau County Police Act and State Law 7-a are all New York State statutes which authorize and presently sanction the Nassau County Police Department Marine Bureau's procedure of assisting and towing distressed vessels on its navigable and tidal waterways. Of singular importance are the provisions of federal law on the subject, to wit, 14 U. S. C. §§ 2, 81, 88 and 826. 14 U. S. C. §88(a)(4) authorizes the United States Coast Guard to tow floating dangers to navigation. 14 U. S. C. §826 authorizes the United States Coast Guard to utilize for any purpose incident to carrying out its functions and duties, any vessel placed at its disposal by any political subdivision of a state. Thus, when the United States Coast Guard contacts the Nassau County Marine Bureau and said Bureau acts in response to the United States Coast Guard, respondents herein are in full compliance with state and federal law on this subject. While respondents contend that the General Business Law §340 has no application herein, it is apparent that assuming *arguendo* it does, compliance by respondents with 14 U. S. C. §826, as required by the Supremacy Clause of the United States Constitution, would bar the applicability of General Business Law §340.

Since General Business Law §340 is patterned after the federal Sherman Anti-Trust Act, it is proper to analogize a municipality's liability under the latter to its liability under the New York State statute. Under the Sherman Anti-Trust Act, a municipality will enjoy immunity from anti-trust scrutiny if its action constitutes either the action of the state itself in its sovereign capacity or municipal action in furtherance or implementation of a clearly articulated

and affirmatively expressed state policy. *Parker v. Brown*, 317 U. S. 341, 350-351, 63 S. Ct. 307, 87 L. Ed. 315, 325-327 (1943); *City of Lafayette v. Louisiana Power and Light Co.*, 435 U. S. 389, 410, 98 S. Ct. 1123, 55 L. Ed. 2d 364, 381 (1978); *Community Communications Company, Inc. v. City of Boulder, Colorado*, ____U. S. ____, 70 L. Ed. 2d 810, 102 S. Ct. ____ (1982). Pursuant to the state laws previously adverted to herein, it is clear that the actions of the respondents would be exempt from federal anti-trust liability since such conduct is an implementation of the clearly articulated and affirmatively expressed state policy contained in the state statutes herein, as well as a lawful exercise of the police power of the state. Therefore, as noted earlier, since Section 340 of the General Business Law is patterned after the Sherman Anti-Trust Act, respondents' conduct should likewise be exempt from anti-trust liability under the state statute. *Optivision, Inc. v. Syracuse Shopping Center Assocs.*, 472 F. Supp. 665, 680, 681 (N.D.N.Y. 1979).

Section 340 of the General Business Law clearly requires some kind of "contract, agreement, arrangement, or combination" between two or more entities. See *State of New York v. Mobil Oil Corp.*, 38 N. Y. 2d 460, 464 (1976). In the case at bar, the actions taken by respondents are in full compliance with federal and state laws. Furthermore, the aforesaid section requires a monopoly or restraint of competition "in the conduct of any business, trade or commerce or in the furnishing of any service." The actions of respondents herein certainly cannot be characterized as a monopoly of a business, trade or commerce since the United States Coast Guard can designate any member of the Coast Guard Auxiliary, any corporation, partnership, association, state or political subdivision to assist it in its functions and duties. Moreover, the "furnishing of any

service" language applies only to anti-competitive practices of service industries, thereby being "confined to a commercial or business setting." *In re Freeman*, 34 N. Y. 2d 1, 7 (1974). Respondents' conduct, as noted above, cannot possibly be characterized as monopolistic in nature.

Even if the activities of respondents are considered to be within the scope of Section 340(1) of the General Business Law, such activities are warranted nevertheless as a reasonable and proper exercise of its police power to protect and foster public health, safety and welfare. The governmental service provided by the respondents is clearly essential to the safety, health and welfare of mariners and their property, who frequent the navigable and tidal waterways of the County of Nassau.

Finally, petitioner's contention that the respondents' conduct constituted a taking without compensation is completely without merit. Petitioner in its petition cites *Rochester Telephone Corp. v. Village of Fairport*, 84 A. D. 2d 455 (4th Dept. 1982), as support for its argument. This case, however, is readily distinguishable from the one at bar. The facts of that case involve the utility's action against the Village of Fairport for costs incurred in placing certain transmission facilities underground in an area being reconstructed by the village. The Fourth Department of the State of New York, in imposing liability on the village, reasoned that the reconstruction was neither reasonable nor necessary for the public good. Respondents submit that their conduct is a necessary and appropriate exercise of the police power that is mandated by both state and federal law. The Court of Appeals of the State of New York has indicated that where government acts in its arbitral capacity, there is no compensable

damage. *Lutheran Church v. City of New York*, 35 N. Y. 2d 121 (1974).

The case of *Barry v. Barchi*, 443 U. S. 55 (1979), cited by the petitioner at page 34 of its brief, deals with a suspension of a horse trainer's license under New York Law. In *Barry v. Barchi*, only the post-suspension procedure was held violative of due process in that there was no provision for a timely hearing. Obviously, that case cannot be analogized to the within case, in that, here, the respondents never gave the petitioner a license, much less suspended one. The license referred to by petitioner in its brief is from the Coast Guard, and has nothing whatever to do with the respondents. The respondents did not grant petitioner a license, nor can they take one away. Petitioner would have this Court believe that the Marine Bureau is directing their time and energies solely to discredit one individual. The claims of defamation are baseless. Furthermore, the "proof" of this defamation comes from petitioner itself in hearsay statements which are vague as to time and place and totally devoid of names.

The cases set forth in the petition all deal with the taking (by the giver) of a vested right, such as in a license. See also this Honorable Court's decision in *Loretto v. Teleprompter Manhattan CATV Corp.*, ____U. S. ____, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982), in which it was held that a New York law requiring landlords to allow cable television on the property was held to be a "taking" of property compensable under the Fifth and Fourteenth Amendments.

There must be a right, life, liberty or property which is taken without just compensation. In the within case, petitioner claims there has been a taking. Where is the taking? As stated above, the Marine Bureau had been in existence

long before the petitioner ever thought about being in the towing business. Petitioner's complaints can be analogized to an individual going into the private detective business and complaining that he loses business because the Police Department has a detective squad! Certain functions of our society are governmental and must be treated as such. Furthermore, the Tenth Amendment to the United States Constitution exempts certain integral government operations including, as in the within case, a clear exercise of police power from anti-trust scrutiny.

Conclusion.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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KATHRYN DRISCOLL HOPKINS
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Of Counsel

MICHAEL J. MARRIN
Law Intern
On the Brief

Order of the New York State Court of Appeals, Dated November 16, 1982, with Notice of Entry.

STATE OF NEW YORK,

COURT OF APPEALS.

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixteenth day of November A.D. 1982.

PRESENT, Hon Lawrence H. Cooke, *Chief Judge, presiding.*

2 Mo. No. 1177 SSD 134

AQUATIC TECHNICAL SERVICES, Inc.,
Appellant,

vs.

COUNTY OF NASSAU, NASSAU COUNTY POLICE DEPARTMENT, *et al.*,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

JOSEPH W. BELLACOSA
Clerk of the Court

Notice of Entry.

Sir:

Please take notice that the within is a copy of an Order duly made and entered in the office of the Clerk of the Court of Appeals on the 16th day of November, 1982.

Yours, etc.

EDWARD G. McCABE
County Attorney of Nassau County
Attorney for Defendants-Respondents
Office and Post Office Address
Nassau County Executive Building
Mineola, New York, 11501

To:

Tedone and Tedone, Esqs.
Appellate Attorney for Plaintiff Appellant
2001 Marcus Avenue
Lake Success, New York 11042

Banno, Landi & Pajion, Esqs.
Attys. for Plaintiff
146 Old Country Road
Mineola, New York 11501

State of New York,
County of Nassau, ss:

Affidavit of Service by Mail.

Sophie Goldrich, being duly sworn, deposes and says that deponent is over eighteen years of age, not a party to the proceedings herein. That deponent is employed in the

office of the County Attorney of Nassau County; that on the 19th day of November, 1982 deponent served within order with notice of entry upon

Tedore and Tedore, Esqs.
Appellate Counsel for Plaintiff-Appellant
2001 Marcus Avenue
Lake Success, New York 11042

Banno, Landi & Pajion, Esqs.
Attorneys for Plaintiff
146 Old Country Road
Mineola, New York 11501

by depositing a true copy of the same securely enclosed in a post-paid wrapper in a post office box regularly maintained by the United States Government at Nassau County Executive Building, Mineola, New York, directed to the above at the addresses within the state designated by them for that purpose upon preceding papers.

SOPHIE GOLDRICH

Sworn to before me this
19th day of November, 1982
Theresa Fiero
Notary Public

Theresa Fiero
Notary Public,
State of New York
No. 30-6287650
Qualified in Nassau County
Commission Expires March 30, 1984

be the duty of the heads of each department, institution, office or agency to submit to the deputy commissioner of general services, division of purchase and supply on forms to be supplied by him a requisition for all supplies, materials and equipment the purchase of which has been authorized by the budget for such fiscal year and the necessity for the purchase of which can be clearly foreseen, together with the dates on which such supplies, materials or equipment will be required.

(Amended by Local Law No. 1, 1945; Local Law No. 1, 1958; Local Law No. 19, 1965; Local Law No. 9, 1971, in effect September 27, 1971; Local Law No. 4, 1980, in effect June 9, 1980.)

§ 705. **Deputy Commissioner of general services**, division of purchase and supply may act for town, cities, villages and districts. The deputy commissioner of general services, division of purchase and supply, upon the request of any town, city, village, school district or special district in the county, may act as purchasing agent for such town, city, village, school district or special district, either for all or any part of its purchase, upon such conditions as may be prescribed by ordinance.

(Amended by Local Law No. 1, 1958; Local Law No. 19, 1965, Local Law No. 9, 1971, in effect September 27, 1971; Local Law No. 3, 1980, in effect June 9, 1980.)

ARTICLE VIII

Department of Police

Section 801. Department established.
802. Powers and duties.
803. Entrance into and withdrawal from county police district.
804. Contracts with county police department.

§ 801. **Department established.** There shall be a department of police, the head of which shall be the commissioner of police.

§ 802. **Powers and duties.** Except as otherwise provided in this act, the county police district, if there be one, and the organization, powers, and duties of the police department shall continue to be as provided by the laws of this state relating to police, applicable to the county and in

force on the date when this act becomes effective in the county, and the commissioner of police shall be and have the powers and duties of chief of police as therein provided. All portions of any town, unincorporated as a village or a city at the date on which this act becomes effective in the county or not included in a town police district on such date. irrespective of the inclusion thereof in a village or city incorporated or erected after such date, shall continue to be a part of the county police district, provided however, this shall not apply to any territory which may hereafter be annexed to a city or village existing at the date on which this act becomes effective.

(Amended by L. 1950 Ch. 450, in effect April 5, 1950.)

§ 803. **Entrance into and withdrawal from county police district.** Any city may by ordinance, and any village or police district not a part of the county police district at the date on which this act becomes effective in the county may by resolution of its board of trustees or other governing body, request that the territory of such city, village or police district become a part of the county police district on the first day of January next succeeding the effective date of such ordinance or resolution and that its police force be made part of the county police force. Thereupon, the board of supervisors, if it shall approve the request, may, by resolution, constitute the territory of such city, village or town police district a precinct or a part of the precinct of the county, and constitute the police force of such city, village or town police district members of the police force of the county. In the instance of any city, or of a village or town police district to which the rules of the state civil service commission have been extended, the police force of such city, village, or town police district shall become members of the police force of the county with such rank as shall be certified to the board of supervisors by the civil service commission having jurisdiction thereof. In the case of all other villages or town police districts, the police force of such village or town police district shall become members of the police force of the county with such rank as may be agreed upon by the board of supervisors and the governing body of such village or town police district. Any such city or village may withdraw from the county police dis-

trict on the thirty-first day of December of any year, provided that such ordinance or resolution shall not go into effect for thirty days after its adoption, and if in the meantime a petition of qualified electors equal to ten per centum of the total vote cast in such city or village at the last preceding city or village election shall be filed with the city or village clerk, as the case may be, such ordinance or resolution shall be referred to the people at the next ensuing city or village election, and shall not take effect unless a majority of those voting on the proposition vote in the affirmative; provided that such former police of such city or village as at that time are members of the county police department shall by the act of such withdrawal be returned to their former status as members of such city or village police. (Amended by L. 1937 Ch. 618 § 22, in effect January 1, 1938.)

§ 804. **Contracts with county police department.** Any city, village, or police district, not a part of the county police district, may by ordinance, in the case of a city, or by resolution of the governing body, in the case of a village or police district, enter into a contract with the county police department for a term of not less than two years, by which the county police department will agree to provide a specified degree and type of police protection at a price to be set forth in such contract. It shall be competent in such contract to provide for the number of police to be assigned to duty in such city, village, or district, and the number, ranks and rates of pay of city, village, or district police to be taken into the county police force; provided that, on the termination of such contract, such former police of such city, village or district as at that time are members of the county police department, shall by the act of terminating such contract be returned to their former status as members of the city, village, or district police. Nothing therein contained shall be taken to limit the power of the commissioner of police in removing, demoting, or otherwise disciplining any member of the county police force.

b. Nothing herein contained shall be construed to constitute such school crossing guards and police cadets, members of the police force or to entitle them to the privileges and benefits of the members of the police force nor shall they be deemed peace officers.

c. The commissioner of police shall have the authority to promulgate rules and regulations governing the conduct of school crossing guards and police cadets and he shall prescribe the insigna and uniform to be worn by such guards and cadets.

d. The salaries and other costs and expenses of the police department in connection with guarding school crossings shall be a charge upon the police districts.

(Added by Local Law No. 5, 1954, in effect November 1, 1954; former 8-2.0 renumbered § 8-2.1 and amended by Local Law No. 9, 1965, in effect June 4, 1965.)

e. School crossing guards shall be empowered to issue appearance tickets for parking offenses.

(Subd. e., added by Local Law No. 1, 1982, in effect January 18, 1982.)

§ 8-3.0 **Commissioner; powers and duties.** Except as otherwise provided in this chapter, the commissioner shall have the jurisdiction and control of the government, administration, disposition and discipline of the police department and he may promulgate and enforce rules and regulations for such purposes. (§ 8.3.0 erroneously omitted in compiling main volume; amended by Local Law No. 3, 1945, in effect July 9, 1945.)

§ 8-4.0 **Police Force.** There shall be a police force which shall render such police service as may be prescribed by this chapter. The police force shall consist of such numbers of captains, lieutenants, sergeants, and police officers as shall be determined by the board of supervisors upon the

(Continued on Page 104-1)

Section 8-12.0 and 8-13.0 of the Nassau County Administrative Code.

2. Is not a citizen of the United States;

3. Cannot understandingly read and write the English language; or

4. Shall not have resided in the county for one year next preceding his appointment.

(Paragraph 4 of subd. a, amended by Local Law No. 5-1952, in effect November 3, 1952.)

b. Subdivision (a) shall not apply to the commissioner.

§8-12.0 **Detail to duty.** The commissioner may detail without regard to residence, members of the police force to such parts of the county, and to such criminal courts therein as he may deem advisable. He shall also detail to the civil courts held within the county on request of a judge or justice thereof, such number of members of the police force as may be necessary.

§8-13.0 **Discipline and punishment.** a. The commissioner shall have power to discipline a member of the force by:

1. Reprimand;

2. Fine;

3. Suspension, with or without pay;

4. Dismissal or removal from the force; or

5. Reducing him to any grade below that in which he was serving, if he be above the grade of patrolman, after which his compensation shall be the same as that allowed to members of the grade to which he is reduced.

b. Such members shall be disciplined for the following reasons only:

1. Conviction for any criminal offense;

2. Neglect of duty;

3. Violation of rules;

4. Neglect or disobedience of order;

5. Incapacity;

6. Absence without leave;

7. Conduct injurious to the public peace or welfare;

8. Immoral conduct;

9. Conduct unbecoming an officer; or

10. Any other breach of discipline.

The commissioner may designate a captain to conduct hearings on charges against lieutenants, sergeants and patrolmen and to report his fingings and recommendations to the commissioner for action thereon. In case of disciplinary action by fine, not more than thirty days' pay shall be forfeited and withheld for any offense.

c. The commissioner shall remove or dismiss any member of the force only after:

1. Written charges are preferred against and served upon such member, and

2. Such member shall have had an opportunity to be publicly heard and examined before the commissioner.

d. A petition to review a determination by the commissioner to fine, suspend, dismiss or otherwise discipline a member of the police force shall not be granted after the expiration of thirty days from the service of a notice of such determination upon the member of the force so fined, suspended, dismissed or otherwise disciplined.

(Amended by L. 1948 Ch. 436, in effect March 23, 1948.)

Section 8-15.0 of the Nassau County Administrative Code.

§8-14.0 **Resignation; unexplained absence.** a. Any member of the force who shall withdraw or resign, without the permission of the commissioner, shall forfeit such salary or pay which shall be due him. The commissioner may deem an unexplained absence, without leave, on the part of any member of the force for five days or more, a resignation by such member and accept it as such.

b. Any member of the police force who shall accept any place of public trust or civil emolument, or shall be publicly nominated for an elective office, and shall not within ten days thereafter publicly decline such nomination, shall be deemed thereby to have vacated his office.

§8-15.0 **Expenses of the police department; how raised.** a. The board of supervisors shall annually cause to be raised the amount of money required to pay the annual expenses of the police department by levying and collecting a uniform tax upon the real estate subject to taxation located within the police district.

b. Notwithstanding the provisions of subdivision a of this section, the board of supervisors shall annually cause to be raised by levying and collecting a tax upon the real estate subject to taxation located within the county, the amount of money required to pay the annual expenses of the maintenance, operation and personal services of the bureaus, divisions or offices which serve the county, including the following:

1. Communications bureau.
2. Detective bureau.
3. Information bureau.
4. Public saftey bureau.
5. Administrative division.
6. Air division.
7. Identification division.
8. Marine division.
9. Radio division.
10. Transportation and maintenance division.
11. Office of commissioner of police.
12. Offices of chief and district inspectors.
13. Office of police surgeon.

14. Office of property clerk.
15. Technical research laboratory.
16. Highway patrol.
17. Emergency ambulance patrol.
18. Such other bureaus, divisions, squads or offices which serve the county.

Such expenses shall be a county charge.

(Amended by Local Law No. 2 - 1951, in effect December 24, 1951.)

§ 8-16.0 **Petty cash fund.** The board of Supervisors may authorize the county treasurer to furnish the department of police with a petty cash fund, in such amount as the board of supervisors may specify by resolution. Expenditures from this fund shall be covered by itemized vouchers or claims in the name of the fund verified by the oath of the commissioner of police. Upon audit of such vouchers or claims and by means of a warrant drawn on the county treasurer, signed by the comptroller, the treasurer shall reimburse such petty cash fund the amount so audited and allowed.

Such fund shall be used for:

1. Defraying the expenses of the department in meeting public emergencies, and

2. Advancing the expenses that might be incurred by members of the force in the course of their assigned duties.

(Former §8-16.0 repealed; new §8-16.0 added by Local Law No. 1, 1946; amended by Local Law No. 6, 1954, Local Law No. 7, 1963, Local Law No. 13, 1966; Local Law No. 3, 1966 in effect September 23, 1966.)

§8-17.0 **Liability of county for negligent operation of vehicles.** a. The county shall be liable for the negligence of a member of the police department while operating a vehicle owned by the county upon the public streets or highways of the county in the discharge of a statutory duty imposed upon the police department, providing such member at the time of the accident or injury was acting in the discharge of his duties and within the scope of his employment.

b. Any liability incurred by the county pursuant to this section shall be a charge against the county and moneys to

Section 8-22.0(5) of the Nassau County Administrative Code.

b. Any warrant of search or arrest issued by any magistrate of this state may be executed in any part thereof by any member of such force. The provisions of the code of criminal procedure relating to the giving and taking of bail shall apply to any arrest so made by a member of such force.

§8-22.0 **Duties of police department.** It shall be the duty of the police department within the boundaries of the police district to:

1. Preserve the public peace.
2. Prevent crime.
3. Detect and arrest offenders.
4. Protect the rights of persons and property.
5. Guard the public health.
6. Preserve order at elections and all public meetings and assemblages.
7. Remove nuisances existing in public streets, roads, places and highways and arrest all street mendicants and beggars.
8. Regulate the movement of vehicular traffic in streets, road, places and highways and install or authorize the installation of traffic signal lights for said purposes.

(Subd. 8 amended by Local Law No. 5, 1964, in effect August 19, 1964.)

9. Provide proper police attendance at fires.

(Subdivisions 10 and 11 repealed by Local Law No. 3 - 1945, in effect July 9, 1945.)

10. Enforce and prevent the violation of all laws and ordinances in force in such district; and for these purposes with or without warrant, to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crime and offenses.

(Subdivision 12 renumbered to be subdivision 10 by Local Law No. 3 - 1945, in effect July 9, 1945.)

§8-23.0 **Departmental records and books.** The commissioner shall cause to be kept a general complaint book, police blotters, a force record and such other records and books as he may, with the approval of the county executive,

Section 22-1.0 of the Nassau County Administrative Code.

12. to plan and implement programs to increase the general understanding of the contribution of the arts to the economic development of the county and tourism.

13. to perform such other duties that the county executive and the board of supervisors may assign.

14. notwithstanding any of the above provisions, the board shall not have any authority over programs conducted by the Nassau county department of recreation and parks or of the friends of the Nassau county museum.

§ 21-100.4 **Compensation and expenses.** All members shall serve without salary or compensation with the exception of the chairman who, as director, shall receive a salary as ordinanced annually. However, all members shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(Referred to as "Title II" in original; probably should be "Title J"; added by Local Law No. 5, 1978, in effect September 25, 1978.)

CHAPTER XXII

GENERAL PROVISIONS

Title A. In General

Section 22-1.0 Definitions.
22-2.0 Powers of heads of agencies over subordinates.
22-2.1 Personal liability of heads of agencies.
22-2.3 Attendance of officers and employees at conference, conventions and schools.
22-2.4 Fiduciary bonds.
22-2.5 Individual official undertakings.
22-2.6 Notary public commissions.
22-2.7 Group automobile insurance payroll deduction.
22-2.8 Indemnification.
22-3.0 Rules and regulations.
22-3.1 Destruction of books, accounts and papers.

22-4.0 Official oaths.
22-4.1 County agencies relieved from payment of fees to county and town officers.
22-4.2 Code of Ethics.
22-5.0 Construction.
22-6.0 Enumeration of powers not restrictive.
22-7.0 Method of numbering used herein.
22-8.0 No revival of laws.
22-9.0 No repeal by implication.
22-10.0 Effect of local law.
22-11.0 Judicial notice.
22-12.0 Effect of this code on existing law.
22-13.0 Separability.
22-14.0 Short title.
22-15.0 Nassau Community College Security Force
22-15.1 D.G.S. - Appearance Tickets -

TITLE A
In General

§ 22-1.0 **Definitions.** As used in this code, unless otherwise expressly stated or unless the context or subject matter otherwise requires:

1. The term "charter" means the county government law of the county of Nassau.

2. The term "county" means the county of Nassau.

3. The term "board of supervisors" means the board of supervisors of the county of Nassau.

4. The term "administrative code" or "code" means the Nassau county administrative code.

5. The term "municipal corporation" means any town, village or city in the county of Nassau.

6. The term "district" means any special or school district in the county of Nassau.

7. The term "superintendent of public works" means the state superintendent of public works.

Section 22-3.0 of the Nassau County Administrative Code.

9. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the county or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provisions of state, county or federal statutory or common law.

10. If any provisions of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

(Amended by Local Law #2-1980, in effect April 30, 1980.)

§ 22-3.0 **Rules and regulations.** Each head of an agency, except as otherwise provided by law, may make rules and regulations for the conduct of his office or department.

§ 22-3.1 **Destruction of books, accounts and papers.** The head of any agency shall have the right and power to destroy such books, accounts, letters, maps, charts, papers or other writings which have been retained in his office over six years, upon consent of the commissioner of education of the state of New York and when specifically authorized so to do by ordinance of the board of supervisors.

(Amended by L. 1949 Ch. 247, in effect March 22, 1949.)

§ 22-4.0 **Official oaths.** Every officer of the county shall take and file an oath of office before he shall be entitled to enter upon the discharge of his official duties.

§ 22-4.1 **County agencies relieved from payment of fees to county and town officers.** a. It shall be unlawful for any salaried officer of the county or of the towns within the county or of the supreme court held in and for Nassau county or of the surrogate's court of Nassau county or of the county court of Nassau county or of the district court

Section 22-10.0 of the Nassau County Administrative Code.

Law No. 4, 1964, adding subsection c to subdivision 1, in effect August 19, 1964, subdivision 7 amended by Local Law No. 9, 1973, in effect October 1, 1973; adding section 8 by Local Law No. 2, 1976, in effect February 3, 1976; subd. (b) of section 8 added by Local Law No. 4-1977, in effect April 18, 1977)

§ 22-5.0 **Construction.** This code shall be construed liberally.

§ 22-6.0 **Enumeration of powers not restrictive.** The enumeration of specific powers by this code shall not operate to restrict or limit a general grant of power contained in this code or to exclude other powers comprehended in such general grant.

§ 22-7.0 **Method of numbering used herein.** The method of numbering sections of the code by reference to related articles of the charter shall not be construed to limit the application of such sections to the articles of the charter to which such sections refer.

§ 22-8.0 **No revival of laws.** a. If in this code there shall have been incorporated any provision of law that heretofore shall have been superseded or specifically or impliedly repealed, such incorporation shall not revive such superseded or repealed provision nor shall such incorporation be construed to indicate any legislative determination that such provision had not been theretofore so superseded or repealed.

b. Subdivision a shall not apply to section 19-18.0 of the code.

§ 22-9.0 **No repeal by implication.** It is not intended by this code to repeal by implication any existing provision of law and no law shall be deemed repealed thereby unless expressly provided for herein.

§ 22-10.0 **Effect of local law.** This code shall not operate to deprive the board of supervisors of the power to enact local laws in relation to any matter in respect to which such power would otherwise exist, nor shall it limit such power. If this power otherwise exists, any provision of

this code may be superseded, supplemented or amended by local law in the same manner and to the same extent as such provisions could be superseded, supplemented or amended had this code not been enacted.

§ 22-11.0 **Judicial notice.** All courts shall take judicial notice of all laws contained in this code and of all rules and regulations adopted pursuant to the charter or the code.

§ 22-12.0 **Effect of this code on existing law.** Insofar as the provisions of this code are the same in terms or in substance and effect as provisions of law in force when this code shall take effect relating to or affecting the county, the provisions of this code are intended to be not a new enactment but a continuation of such provisions of law, and this code shall be so construed and applied.

§ 22-13.0 **Separability.** If any clause, sentence, paragraph, section or part of this code shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 22-14.0 **Short title.** This code shall be known and may be cited as the "Nassau county administrative code."

§ 22-15.0. The Nassau Community College Security Force is hereby authorized to issue appearance tickets for parking offenses on the Nassau Community College Campus.

Added by Local Law 1 - 1980 in effect February 4, 1980.)

§ 22-15.1. The security personnel of the Department of General Services with titles of Security Officer II, III or IV are hereby authorized to issue appearance tickets for parking offenses which occur in County installations.

Added by Local Law Local Law #3-1980 in effect June 9, 1980.)

Section 26-14.0 of the Nassau County Administrative Code.

c. Such board of supervisors is hereby further authorized, from time to time, to appropriate and otherwise make available as in the case of county expenses, sums sufficient to pay such salaries or compensation and such other expenses as may be necessarily incurred by such board, which expenses such board is hereby authorized to incur. Such moneys shall be paid out in the same manner as county expenses on the requisition of a person designated for such purpose by the board.

§ 26-13.0 **Duration of board.** Nothing contained in any law shall be construed to prevent the county executive, the county attorney, the comptroller, and the members of the board of supervisors from serving on such board. The board of statutory consolidation and revision shall expire two years after the seventh day of February, nineteen hundred thirth-nine.

§ 26-14.0 **"Municipal corporations" defined.** As used in this article, the term "municipal corporations" shall mean or include the towns, villages, cities, and districts contained in the county.

Section 2. **Laws repealed.** a. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column, is hereby repealed.

b. The term "part relating to Nassau county" when used in the schedule of laws repealed hereto annexed, shall mean and include such part of the provision of law which relates to any agency or area of the county or any municipal corporation or department therein, or any part thereof.

Section 3. **Time of taking effect.** This act shall take effect immediately.